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MTC Res. No. 3636

**Regional Measure 2  
Regional Traffic Relief Plan  
Policies and Procedures**

**Amended November 17, 2004**

**MTC Resolution No. 3636  
Attachment A**

**Metropolitan Transportation Commission  
Programming and Allocations Section  
<http://www.mtc.ca.gov>**

**Policies and Procedures  
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## **Section 1 – General Provisions**

### **Background**

On March 2, 2004, voters passed Regional Measure 2 (RM2), raising the toll for all vehicles on the seven State-owned toll bridges in the San Francisco Bay Area, by \$1.00. This extra dollar is to fund various transportation projects within the region that have been determined to reduce congestion or to make improvements to travel in the toll bridge corridors, as identified in SB 916 (Chapter 715, Statutes of 2004). Specifically, RM2 establishes the Regional Traffic Relief Plan and identifies specific capital projects and programs and transit operating assistance eligible to receive RM2 funding as identified in Sections 30914(c) & (d) of the California Streets and Highways Code.

The following serve as the general provisions in the management of RM2 funding.

### **Fund Management**

The collection of toll revenue is estimated at present time to equal \$125 million annually, after costs of administering RM2. An annual limit of up to 38 percent, a funding cap estimated to be reached in 2015, is made available for those operational elements of RM2. In addition, costs to administer the program are an annual drawdown on the revenue. Finally, first year costs include the required reimbursements to counties for the costs of administering the RM2 ballot measure as part of the March 2nd 2004 general election, as well as the 4-month discount from July 2004 through October 2004 to encourage more users to sign up for FasTrak, the Bay Area's electronic toll collection system.

#### ***Program Financing Costs***

It is the intent of the Commission to implement those projects and programs outlined in Streets and Highways Code Section 30914 (c) and (d), to the funding amounts designated.

The cost of bonding and financing associated with RM2, including interest payments shall be considered a program cost and shall be identified in the annual RM2 Budget as the first priority repayment. The financing costs are not predicted to reduce the overall funding level available to projects and programs.

#### ***Funding Exchanges***

Generally, the exchange of RM2 funding with other types of funding from projects not identified in RM2 shall not be allowed, nor shall projects be substituted.

#### ***Matching Funds***

A local match is not required for RM2 funds. Funds other than RM2 funds identified in the financial plan must be available at the time of allocation. Regional Measure 2 funds can be used as the match for federal fund sources requiring a non-federal match.

### **Public Involvement Process**

The capital improvement projects and operating assistance for transit services identified for funding in RM2 are established by state legislation (Senate Bill 916, Chapter 715, Statutes of 2004) approved by the voters on March 2, 2004. In accordance with the legislation as approved

by the voters, the Bay Area Toll Authority (BATA) is the financial manager for RM2 funds, whose responsibilities include the preparation of financial plans, the issuance of debt financing, and the disbursement of funds to project sponsors. The Metropolitan Transportation Commission is the program and project coordinator, whose responsibilities include reviewing project applications, programming and allocating funds to specific projects, and monitoring project delivery. In some cases, MTC also serves as the project sponsor, for the regional Transit Connectivity Study, as well as certain regional customer service projects, such as the Transit Commuter Benefits promotion, the Real Time Transit information program, and implementation of TransLink®.

Generally, in conducting its review and approval responsibilities stipulated under RM2, MTC will adhere to its public participation policies as outlined in MTC Resolution No. 2648, MTC's Policy and Procedures on Public Involvement.

Specific statutory provisions require further that as part of its annual assessment of the status of programs and projects under RM2, MTC may make a finding that a program or project cannot be completed or cannot continue due to financing or delivery obstacles making the continuation of the program or project unrealistic. MTC may then determine that the funding will be reassigned. Under these circumstances, the Commission shall hold a public hearing on the project after consultation with the program or project sponsor. The process outlined in MTC's Policy and Procedures on Public Involvement for notification of actions at BATA, Commission, and committee meetings will be adhered to. After the hearing, the Commission may vote to modify the program or the project's scope, decrease its level of funding, or reassign all of the funds to another or an additional regional transit program or project in the same corridor.

### **Indemnification of MTC**

The sponsor shall indemnify and hold harmless MTC, its Commissioners, officers, agents, and employees from any and all claims, demands, suits, loss, damages, injury, and/or liability, direct or indirect, incurred by reason of any act or omission of sponsor, its officers, agents, employees, and subcontractors, under or in connection with the RM2 program. Sponsor agrees at its own cost, expense, and risk, to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against MTC, its Commissioners, officers, agents, and employees, or any of them, arising out of such act or omission, and to pay and satisfy any resulting judgments.

## **Section 2 – Capital Program Guidance**

### **Background**

Projects eligible to receive funding from the Capital Program of the Regional Measure 2 (RM2) Regional Traffic Relief Plan are those projects identified to receive funding under Section 30914(c) of the California Streets and Highways Code (S&HC).

RM2 requires sponsors with projects listed in Section 30914(c) of the S&HC to submit an Initial Project Report (IPR) to MTC before July 1, 2004. These reports must be updated and submitted to MTC annually or as requested by MTC. The Commission will consider approval of the report, or an updated report, in conjunction with the allocation of funds. At a minimum, the IPR will need to be updated with new and/or revised information prior to each allocation.

Project sponsors shall not receive reimbursement of costs incurred prior to MTC approval of the allocation of funding. Final allocation decisions will be subject to the availability of funds.

### **Useable Segment/ Deliverable Product**

RM2 funds for capital projects will be allocated with the specific intent of achieving a product. Deliverable products shall be considered as:

- A completed planning or transit study/ environmental decision/ project approval documentation when allocating to the environmental phase;
- The final design package including contract documents when allocating to the final design phase;
- Title to property/ easements/ rights of entry / possession or utility relocation when allocating to the right of way phase;
- A completely constructed improvement (or vehicle acquisition/ rehabilitation) available for public usage when allocating to the construction phase.

The ability of the product to be completed will be taken into consideration when the Commission allocates funds to the project. Any impediments to achieving the specific product shall be brought to the attention to the Commission in the Initial Project Report and through quarterly progress reports submitted by the project sponsor. If in the opinion of the Commission, impediments are such that the required product is unachievable, the Commission may withhold allocations, or withhold reimbursements on previously allocated funds.

The expenditure of RM2 funds for any phase of the project must lead to making available to the public a useable or operable segment in accordance with the legislative intent. Any additional funds required to fully fund the project must be identified in the uncommitted funding plan of the Initial Project Report (IPR). If the RM2 revenues are funding only a phase or segment of a larger project, it must be demonstrated that the RM2 deliverable phase or segment is fully funded with committed funds.

In general, allocations will be made to the project a phase at a time. Exceptions to this will be considered; however, the Commission will strive to minimize funding risks in making allocation exceptions.

### **Authority to Expend**

If a project or project component is ready for implementation earlier than RM2 funding is available, the sponsor may request an allocation of funds covering eligible expenditures with deferred reimbursement. A commitment of the funding may be made by the Commission including a determination of when the funds will be available. This action will be taken with the concurrence of the project sponsor; otherwise, the sponsor may elect to wait for an allocation until such time revenues are available. The sponsors will proceed at their own expense. The sponsor shall adhere to the policies and procedures governing allocations and reimbursements. This deferred reimbursement is similar in concept to the Federal Highway Administration's (FHWA)'s Advance Construction (AC) authorization, or the Federal Transit Administration's (FTA)'s pre-award authority or the California Transportation Commission's (CTC)'s AB 3090 approval.

The project sponsor must obtain the Commission's approval of the allocation and description of eligible costs prior to incurring costs. Once the Commission approves the allocation, the sponsor may proceed with eligible expenditures, with the allocation conditioned on the deferred reimbursement for eligible costs, in accordance with the allocating resolution. Project sponsors cannot receive reimbursement of costs incurred prior to MTC approval of the allocation of funding. Project sponsors shall proceed solely at their own risk in advertising, opening bids, or awarding a contract prior to an allocation of RM2 funds. The advertising, bid opening, or awarding of a contract by the sponsor shall in no way prejudice the Commission into making an allocation they deem is unsuitable. Final allocation decisions will be subject to the availability of funds.

### **Initial Project Report (IPR)**

Project sponsors with projects identified to receive funding under Section 30914(c) of the S&HC are required to submit an Initial Project Report (IPR) to MTC before July 1, 2004. The project sponsor is required to submit an updated report to MTC at least annually, by June 30<sup>th</sup> of each year. The first annual update will be due to MTC no later than June 30, 2005. The updated information will be considered for inclusion in the RM2 annual report. An updated report must be submitted as needed or as requested by MTC; at a minimum, sponsors must submit an updated IPR with any funding allocation request. The Commission will consider approval of the report, or updated report, in conjunction with the allocation of funds.

This report shall include all information required to describe the project in detail, including identification of lead sponsor, the status of any environmental documents relevant to the project, additional funds required to fully fund the project, the amount, if any, of funds expended to date, a summary of any impediments to the completion of the project, a detailed financial plan, and notification to the Commission if the project sponsor will request toll revenues within the subsequent 12 months (next fiscal year). Specific information on the Initial Project Report format is included in Appendix A.

### **Allocation Process**

The allocation process for RM2 capital projects shall consist of funding agreements with sponsors accompanied by evidence of local support, local agreement to conditions, and local

certification of absence of legal impediments and local indemnification of the Commission. Under S&HC 30914(e), MTC can enter into a memorandum of understanding between itself and a capital project sponsor addressing specific requirements to be met prior to the allocation of funds. These agreements are to be executed through a process of project sponsor governing board certification followed by Commission allocation action.

For capital projects, an IPR as outlined in S&HC 30914(e), and detailed in Appendix A shall be prepared and adopted by the governing Board prior to MTC approval of the IPR and allocation of funds.

In lieu of a separate funding agreement, the sponsor will be expected to certify through an action of its governing board that certain conditions are acknowledged and will be adhered to. General conditions required in that certification are outlined below. As well, a listing of the types of project specific conditions is included.

Along with the certification of conditions from the project sponsor governing board and the IPR, the sponsor will need to provide evidence that the other fund sources contributing toward that project phase are committed. The essential test to be met is when the project sponsor requests reimbursement of RM2 funds, matching fund sources are reimbursed and drawn down at the same rate as the RM2 funds.

Upon completion of the lead sponsor governing board certification, the Commission will consider the allocation of RM2 funds. The Commission will (1) review the governing board action to ascertain that all conditions have been outlined and agreed to; (2) review the IPR approved by the governing board and approve it prior to allocating any funds; and (3) consider the commitment of other fund sources matching the RM2 funds that are required to complete that phase of the project. The Commission's resolution approving the IPR and allocation of RM2 funds will serve as the final agreement between MTC and the implementing agency.

An allocation request will be considered complete and ready for consideration by the Commission when all of the component elements to the request are submitted and approved for forwarding to the Commission by MTC staff.

### **Allocation Principles**

The collection of toll revenue pursuant to RM2 is estimated at \$125 million annually. Up to 38 percent or approximately \$47.5 million is made available annually for those operational elements of RM2. In addition, costs to administer the program are an annual drawdown on the revenue.

The revenue remaining may not match the capital demand on the funds. The Commission will carefully consider each allocation and apply the following principles in its allocation decisions:

1. RM2 funds will not be utilized as a replacement fund source on capital projects for any funds that have been programmed or allocated previously to the project, for the phase requested by the project sponsor, if such replacement results in a shortfall for the overall project or places prior programming commitments in jeopardy.

2. RM2 funds will not be utilized for any capital expenditure, either for right of way or construction, until the project has been environmentally cleared and the project has been approved by the project sponsor. The Commission will give careful consideration to requests for right of way protection or hardship requests whereby early acquisition of right of way is necessary to respond to owner hardship, or to avoid excessive right of way cost increases in the future due to development of the site.
3. RM2 funds will be expended for right of way capital and support only if the project has identified and committed construction capital funds. The Commission will consider exceptions whereupon investment in right of way can be recovered if the project does not go forward.
4. Allocations will only be made to projects a phase at a time: environmental/project approval, final design, right of way, and construction. For example, if the project is entering the environmental phase, only an allocation for environmental will be considered. Exceptions will be considered on a case-by-case basis.
5. RM2 funds will be allocated with the specific intent of achieving a deliverable product. That product shall be the environmental decision/ project approval documentation when allocating to the environmental phase, the final design package including contract documents when allocating to the final design phase, title to property/ easements/ rights of entry or possession when allocating to the right of way phase, and a constructed improvement or minimum operating segment available for public usage when allocating to the construction phase.
6. The ability of the product to be completed will be taken into consideration when the Commission allocates funds to the project. Any impediments to achieving the specific product shall be brought to the attention of the Commission in the IPR or through quarterly progress reports submitted by the project sponsor. If in the opinion of the Commission, impediments are such that the required product is unachievable, the Commission may withhold allocations. The Commission reserves the right to issue a 30-day stop notice in the event it has to reevaluate the project per S&HC 30914(f).
7. Projects with complementary funds from other sources may be given priority if there are pending timely use of funds requirements on the other fund sources.
8. Other fund sources committed to a project phase that are complementary to RM2 funds will be expected to be spent down at an approximate proportional rate to RM2 funds. On an exception basis, the Commission may consider alternative cash flow expectations of other fund sources.
9. For transit systems, an allocation of funds for capital expenditures, either right of way or construction, may be predicated on an ability to demonstrate that the service meets operating requirements.

### **Allocation Request**

Project sponsors or implementing agencies must initiate an allocation request by submitting an Allocation Request Form and a draft Initial Project Report 60 days prior to the required Commission action. Thirty days prior to the Commission action, the project sponsor or implementing agency must submit the completed allocation application package to MTC. Each phase of the project is to receive a separate allocation. The allocation request consists of the following, detailed in Appendix A, and is available on the Internet (as applicable) at:

<http://www.mtc.ca.gov>:

Intent to Request an Allocation (60 days prior to Commission action):

1. Allocation Request Initiation Form
2. Draft Initial Project Report

Allocation Application Package (30 days prior to Commission action):

1. Implementing Agency Resolution of Project Compliance
2. Opinion of Legal Counsel / MTC Indemnification\*
3. Board or Official Governing Body Approved Initial Project Report (IPR)
4. Environmental Documentation\*\*
5. Evidence of Allocation and Commitment of Complementary Funds \*\*
6. Allocation WorkPlan \*\*
7. Allocation Estimated Budget Plan

\* Project sponsors have the option of consolidating the 'Opinion of Legal Counsel / MTC Indemnification' within the 'Implementing Agency Governing Board Resolution of Project Compliance'.

\*\* A standard format for these elements of the allocation request has not been developed by MTC. Submission of the information for these items can be in the format as desired by the project sponsor or implementing agency.

### **Reimbursed Costs**

Capital projects in the Regional Traffic Relief Plan shall be paid on a reimbursement basis only. Project sponsors must seek an allocation of funds by the Commission, with reimbursement of eligible costs following the expenditure of funds. Sponsors are to submit invoices on a quarterly basis, and are encouraged to seek reimbursements of eligible costs on a timely basis. The MTC Executive Director is delegated the authority to act on behalf of the Commission to grant more frequent invoicing and reimbursements, but not more frequently than monthly.

### **Eligible Expenses**

To ensure that that RM2 funds are put to the most efficient use, limitations on allowable expenses have been placed on environmental, design, right of way, construction, staff support, oversight, consultant services and other aspects of project delivery. Furthermore, agency overhead costs, including administrative support, office equipment, office leases, are not an eligible RM2 expense.

Note that for all project phases, RM2 funds are limited to the statutorily authorized amount:

#### **1. Environmental Studies**

RM2 funds are eligible to reimburse expenses incurred by sponsor staff and consultant staff for environmental study costs, including determination of the appropriate environmental document, preparation of all preliminary engineering for each alternative, including geometric layouts, determination of right-of-way needs, environmental technical studies (such as air, noise, energy, cultural resources and hazardous waste), and all other studies or activities necessary to prepare and to finalize the appropriate environmental document for approval. Environmental costs eligible for reimbursement shall be limited to the project as

described in S&HC Section 30914 (c). Any environmental costs associated with an element of the environmentally scoped project that is beyond the project scope and intent as outlined in S&HC 30914 (c) and approved by the Commission in the IPR are not eligible for reimbursement under RM2.

If costs for environmental studies and preliminary engineering up to 35 percent design are estimated to exceed 10 percent of the overall project costs, then RM2 funds may not be eligible for any expenditure in excess of that 10 percent limit. If the sponsor requests additional costs to be considered as an allowable allocation of expenses for the RM2 program, the project sponsor shall provide sufficient evidence to MTC of the need for the additional funds. This evidence at a minimum shall include a breakdown of the costs of the technical studies needed for each alternative under consideration, the cost of outreach to the affected communities, the cost of any permit negotiations, and the cost of preliminary engineering necessary to reach the environmental decision. MTC shall consider these elements as well as all other aspects of the environmental process prior to any additional allocations being made.

## **2. Design Costs**

RM2 funds are eligible for expenses incurred by sponsor staff and consultant staff for design activities related to the project scope identified in S&HC 30914 (c) and as approved by the Commission in the IPR. These activities include preparation of alternative design studies; materials and foundation reports; drainage, hydrology and hydraulic reports; management oversight; surveying and mapping; preparation of the plans, specifications and estimate; preparation of bid documents and files for project; preparation of permit applications and maintenance agreements; coordination of agency reviews and any other activities necessary to prepare final PS&E for bid advertisement and award.

If the sponsor wishes to include items of work not covered under the statutory description of the project and as approved by the Commission in the IPR, the cost for including the additional work shall be segregated and the cost borne by the sponsor from non-RM2 fund sources. Items of work that would fall into this area would be the correction or betterment of pre-existing items such as pavement, drainage facilities, landscaping (beyond Caltrans standards) or pedestrian facilities, unless these are an integral part of the project scope and necessary to meet the congestion relief goals of the RM2 program.

## **3. Right-of-Way Acquisition and Utility Relocation**

RM2 funds are eligible for expenses incurred by sponsor staff and consultant staff for all activities related to right-of-way, advanced right-of-way, and hardship acquisitions, including determination of right-of-way needs; title searches; parcel appraisals; hazardous materials disposition; preparation of right-of-way acquisition documents; negotiation with property owners; activities involved with acquiring rights-of-way including condemnation proceedings, right-of-way capital costs, and cost-to-procure impacts related to the acquisition; utility relocation costs.

Services provided for right-of-way activities involved with property not necessary for the RM2 project as defined in the scope of work approved by the Commission in the IPR shall be at the expense of the sponsor and borne by non-RM2 fund sources.

If any excess right-of-way is sold, or otherwise disposed of, the value of such property shall be returned to MTC, including any profit realized from the sale of the property based on the prorated percentage of funds MTC contributed to the purchase of the property.

#### **4. Construction Costs**

RM2 funds are available to cover all construction expenditures for the project including construction capital, management and inspection, surveys, public outreach, and others as appropriate that are part of the scope of work approved by the Commission in the IPR. RM2 funds are eligible for reimbursement of sponsor's management oversight expenses associated with the construction of the project. This would include activities such as construction management, inspection, expenses associated with reviewing proposed change orders, and activities involved with managing the fund sources contributing to the project.

Sponsor may include additional work beyond the scope of work for the RM2 project at their expense. These costs will be segregated from the other item work expenses and paid for with non-RM2 funds. Items of work could include correction or betterment of pre-existing facilities such as pavement, drainage, landscaping or pedestrian facilities. Items of work within the scope, but covering more expensive treatment for the facility such as specialized lighting standards and signs, more elaborate landscaping or specialized treatment on the face of soundwalls and retaining walls, and specialized sidewalk/hardscape treatments will also be segregated from other project work and paid with non-RM2 funds.

Capital improvements and vehicle procurements for the implementation of the approved RM2 projects are eligible for construction funds. Vehicles procured with RM2 funds must be operated in revenue service for their useful life, as defined by MTC's Transit Capital Priorities process and criteria program.

#### **5. Implementing Agency Staff Costs**

The amount for which implementing agency staff can be reimbursed will be limited, as described below. In all cases, staff costs will be charged within the cap of project funds stipulated in RM2.

- a) Agency overhead costs are not eligible for reimbursement from RM2 funds. Costs for implementing agency management and oversight staff, such as City Managers, City Engineers, Public Works Directors, City Attorneys, accountants and senior management staff, will be considered as part of the implementing agency's overhead cost and will not be eligible.
- b) Costs for consultant staff responsible for directly delivering the project are eligible.
- c) Implementing agency staff costs are eligible provided costs are directly related to the project tasks. A mark-up rate of the hourly wage is allowed to cover hourly wages and

fringe benefits only. Agency overhead costs are not eligible as part of the mark-up rate. While a cap on the mark-up rate is not specified, the sponsor is required to submit documentation to MTC to substantiate its requested mark-up rate prior to any reimbursements against an allocation. For projects with multiple project sponsors and/or implementing agencies, the project sponsors and/or implementing agencies must mutually agree on the mark-up rate(s) being applied to the direct agency staff costs on the project.

## **6. Miscellaneous Costs**

The costs of fees from other agencies, including permit fees, or reimbursement for review or oversight costs needed for the project are eligible costs. However, the cost of permits or fees from the sponsor will not be eligible. Utility relocation costs are eligible for reimbursement according to previous agreements establishing rights for those utilities. The costs for specialized equipment for testing, analysis or production of documents for project-related work are also eligible.

## **Maintenance and Operating Costs**

Pertaining to capital projects outlined in Streets and Highways Code Section 30914 (c), it is the obligation of the project sponsor to arrange for all costs to operate and maintain the improvement constructed under RM2. No costs will be considered as eligible for reimbursement out of RM2 funds to operate or maintain the facility or any portion of the facility. If a minimum operating segment or other useable segment of the facility is open for public use prior to the entire facility being opened, and if that segment is still the responsibility of the contractor for operation and maintenance, then these contractor costs can be considered eligible for reimbursement as a capital expense. For transit projects that result in enhanced or expanded services, this financial capacity should be documented as part of the Initial Project Report and its updates (as outlined in Appendix A).

## **Invoicing and Reimbursements**

The sponsor may invoice MTC quarterly as eligible work proceeds. Invoices shall include only eligible costs as described above. All eligible costs shall be invoiced on a reimbursable basis. Costs shall be accounted for by invoices sufficient to detail services performed and payments made. An invoice format will be provided to sponsors by MTC. Approval of invoices shall be contingent on the submittal of Quarterly Progress Reports. In the event such Progress Reports are not complete and current, approval of invoices shall be withheld until an acceptable Quarterly Progress Report is submitted.

## **RTP Consistency**

Capital projects seeking allocations must be consistent with the adopted Regional Transportation Plan (RTP), which state law requires be consistent with federal planning and programming requirements.

## **CMP Consistency**

For capital projects, it is required that all committed project phases be included in a Countywide Plan. The phase of the project requiring funding shall be in an approved County Congestion

Management Plan (CMP) or in an adopted Capital Improvement Program (CIP) for counties that have opted out of the CMP requirement, prior to seeking allocation of RM2 funds. For multi-county projects, the project must be in the countywide plans and CMP/CIP of the counties affected by the project.

### **TIP and Air Quality Conformity**

Federal laws governing requirements for regions to achieve or maintain federally mandated air quality standards require that all regionally significant transportation improvements be part of a required regional conformity finding. This conformity finding, done at both the regional planning level and the programming level, is in essence an analysis and resultant finding by the responsible agency, in this case MTC as the Metropolitan Planning Organization (MPO) for the Bay Area in concert with the Bay Area Air Quality Management District and the Association of Bay Area Governments. That finding must state that if all the transportation improvements proceed, air quality standards can be reached.

The conformity analysis and finding must encompass all regionally significant projects. A project is regionally significant if it increases transit or highway capacity offers an alternative to established regional highway travel. Projects must be included in the conformity analysis, regardless of their fund source. Such projects using only toll funding, including RM2 funds, or local funds, including measure funds, must be included in the analysis and finding.

To that extent, all regionally significant RM2 projects must be included in the conformity analysis for the Regional Transportation Plan (Plan) and Transportation Improvement Program (Program). Projects must therefore meet the funding requirements that inform those documents. Project specific air quality conformity analysis and findings are the sole responsibility of the project sponsor.

### **Availability for Audits**

Sponsors of capital projects shall be available for an audit as requested by the Commission.

### **Timely Use of Funds Provisions and Deadlines**

The majority of fund sources used for transportation improvements are bound by timely use of funds deadlines. Failure to meet specific funding milestones can result in the funds being deleted from the project. Timely use of funds provisions are established in state and federal statutes for the State Transportation Improvement Program, the federal Surface Transportation Improvement Program (STP), and the federal Congestion Mitigation and Air Quality Improvement (CMAQ) program. MTC's Regional Project Delivery Policy (MTC Resolution No. 3603, approved October 22, 2003) established additional funding milestones for regional STP and CMAQ funding. Given that most RM2 projects are jointly funding with STIP, STP or CMAQ funding, project sponsors must be cognizant of the funding deadlines of the other funds on the project, and reflect appropriate deadlines in the financial plans submitted as part of the Initial Project Report. In the event of funding loss due to the sponsor's inability to meet timely use of funds provisions, the sponsor must demonstrate that the project or project phase is still deliverable.

Although legislation governing RM2 does not place specific deadlines on the funds, MTC will be managing the availability of RM2 funding to ensure continued progress and timely project

delivery. Sponsors shall expend the funding consistent with their expenditure (cash flow) plans. As part of its annual assessment of the status of programs and projects, MTC shall consider the reasonable progress of the project after receiving its allocation. If a program or project cannot continue to be delivered, as evidenced in part by a lack of reasonable further progress, the Commission shall consult with project sponsors, hold a public hearing on the project, then determine whether to modify the project's scope or funding; or to reassign the funds to another or an additional program or project within the same corridor.

Generally, project sponsors should adhere to the following timely use of funds provisions. Any specific conditions and requirements for expenditure and reimbursement pertinent to each project shall be identified in the allocating resolution.

- Funds should be encumbered within six months of the allocation.
- Right of Way agreements should be finalized within two years of the allocation of funds for right of way acquisition.
- Construction/equipment purchase contract should be awarded within one year of the allocation of construction funds.
- Funds should be expended within the year identified in the expenditure (cash flow) plan.
- Final reimbursement of funds will be subject to review of the delivered useable/ operable phase or segment.

Project sponsors must demonstrate and certify that they can meet all of the timely use of funds deadlines as part of the financial plan included in the Initial Project Report for the various fund sources on the project. It is encouraged that project sponsors follow the provisions of the Regional Project Delivery Policy (MTC Resolution No. 3606).

### **Timing Limitation for Environmental Approval**

It shall be the policy of MTC regarding the allocation of RM2 funds for all or a portion of the cost to complete the environmental document/ project approval phase of the project, that the process to achieve environmental document and project approval shall not exceed 3 years. This duration shall be measured from the initiation of the environmental process to its completion and shall not be contingent on when the RM2 funds are expended within that process. The intent of this condition is to ensure due diligence on the part of sponsors to secure environmental clearance.

In the event the administrative draft environmental document has not been submitted for public review within the 3 year time frame, no time extension will be recommended and staff will recommend that the project be considered for scope change or fund reassignment per Section 30914(f) of the Streets and Highway Code.

In the event that the administrative draft has been submitted for public review within the 3-year time frame and the sponsor has worked diligently to achieve environmental clearance and project approval, a time extension of one year may be recommended. Any additional extension request beyond this one-year will require the sponsor submit justification acceptable to the Commission.

### **Project Cancellation**

If the RM2 project or project phase is not completed, the project sponsor shall repay MTC any RM2 funds expended above the proportionate share of eligible costs for the project or project phase. With regard to vehicle procurements, removal from revenue service or sale of the vehicle prior to the end of the vehicle's useful life will result in repayment to MTC and the RM2 program for the depreciated value of the vehicle at the time of removal or sale. Following the Commission consultation with the sponsor, public hearing and determination to redirect funds from the project, payment to MTC shall be made with interest and shall be made in accordance with a negotiated repayment schedule, not to exceed 24 months. MTC shall withhold funds due the sponsor for any missed payments under the negotiated agreement.

### **Project Phases**

Project costs and revenue must be separated into the following project phases:

1. Planning Activities, Environmental Studies & Preliminary Eng (ENV / PE / PA&ED)
2. Final Design - Plans, Specifications and Estimates (PS&E)
3. Right-of-Way Activities /Acquisition / Utility Relocation (R/W)
4. Construction / Rolling Stock Acquisition / Operating Service (CON)

To illustrate previous expenditures from other fund sources, the project sponsor is welcome to indicate any previous planning studies and alternatives analyses for the project. Vehicle acquisition, equipment purchase or operating service should use the construction phase.

The project sponsor must display the project in these four components in the Initial Project Report and expenditure (cash flow) plans. All funding amounts programmed for any component shall be rounded to the nearest \$1,000.

### **Escalated Costs**

RM2 funding for any individual project or program shall be limited to the amount designated in the RM2 legislation. The cost of the project phases should be escalated to the year of expenditure when submitting project cost information to MTC. RM2 funds do not escalate. Local project sponsors may use the state escalation rates or their own rates in determining the escalated project phase cost for the year of expenditure. If funding beyond RM2 amounts are required to complete the project phase the sponsor is responsible for securing the additional funding prior to allocation of RM2 funds.

### **Cost Increases**

MTC participation in project or program costs shall be limited to those dollar amounts as outlined in S&HC Section 30914 (c). All cost estimates by project phase, being environmental/project approval, design, right of way, and construction, shall be shown in the Initial Project Report in the year of expenditure.

Where more than RM2 funds are needed to complete a project phase, it is the sole responsibility of the sponsor to secure the additional necessary funding. In the event that the sponsor cannot secure additional funding, and/or the project cannot be segmented to meet the available funds and still conform to the intent of the legislation and voter mandate, the Commission shall consult

with the program or project sponsor, and conduct a public hearing as outlined in S&HC Section 30914(f). After the hearing, the Commission may vote to modify the project's or program's scope, decrease its level of funding, or reassign all of the funds to another regional project or program within the same corridor. If the existing project is removed from the RM2 program, MTC and the sponsor agree to share expenditures of eligible costs to date in accordance with the allocation conditions accompanying the project allocation.

It is the responsibility of the project sponsor to provide Quarterly Progress Reports, working in cooperation with MTC and its consultants. Proposed contract change orders or cost increases that may arise once the contract has been awarded that are in excess of \$250,000 or 20% of the project cost, whichever is less, shall be noticed to MTC as soon as those increases have been identified or no later than the next scheduled Quarterly Progress Report. The project sponsor will provide assurance that the project phase the Commission allocated to is still deliverable. A revised financial plan for the project shall be included as part of the submitted Quarterly Progress Report.

The sponsor is not authorized to claim any RM2 funds in excess of the allocation amount approved by the Commission in association with the scope, cost, and schedule approved by the Commission. Increased costs are eligible for allocation of unallocated RM2 funds if the sponsor provides an updated funding plan indicating that funds from other phases or other sources are available to assure the delivery of the prescribed RM2 project or project phase. This must be accompanied by evidence that other fund sources, either new or increased in dollar amount, are committed. As mentioned elsewhere in this Policy and Procedure document, other fund sources must be programmed and allocated to the project phase requesting an allocation of RM2 funds or a supplement to the allocation of RM2 funds prior to the Commission approving an allocation of RM2 funds. In no case shall the financial responsibility of BATA and/or MTC regarding RM2 funds exceed the amount designated in S&HC 30914 (c) and (d).

If outside funding is found to be available for the RM2 project or project phase to partially offset the RM2 funds, the RM2 funds will not be transferred out of the project until after it is ensured that any known cost increases are adequately addressed.

### **Cost Savings and Cost Increases at Bid Opening**

At the time of bid opening, the responsible low bid may exceed the funding commitment of RM2 funds as well as other fund sources. If in the event of construction budget exceedances, the sponsor may seek an allocation of any remaining RM2 funds not yet allocated to the project only if other funds are committed in sufficient amounts to deliver the construction phase. If all available fund sources are not sufficient to award the project, the sponsor shall consult with MTC on suitable measures to enable the project to proceed, including but not limited to downscoping the project and rebidding, providing additional clarity to enable a more cost-effective bid, or seeking additional revenues. In no case shall the sponsor exceed the levels of RM2 funding allowable under Street and Highway Code Section 30913(d). In utilizing all available funding from all sources for contract award, the sponsor shall consult with MTC staff or its consultants on the likelihood of cost increases during construction and what contingencies are available to address these costs, including the presentation of a risk management plan for constraining construction expenditures to available revenues.

In the event of cost savings at bid opening, the sponsor shall distribute bid savings proportionately to all construction fund sources, including both capital and support. The RM2 funds shall be available to the sponsor for any cost increases associated with the project after construction award until the time of final close-out of the construction phase, including the settlement of all claims.

Any funds remaining at the end of the project shall be reassigned at the discretion of the Commission.

### **Right of Way Hardship and Protection**

Advance acquisition of property may be advisable prior to the completion of the environmental decision and the approval of the project. This generally occurs either under conditions of hardship or protection.

Hardship is defined as a situation where unusual personal circumstances of an owner are aggravated by the proposed transportation improvement and cannot be solved by the owner without acquisition by the project sponsor. Owners of hardship parcels should receive full consideration and service from the project sponsor consistent with normal acquisition procedures, including appropriate relocation assistance and sufficient time to consider the sponsor's offer.

Protection is defined as an acquisition where substantial building activity or appreciation of vacant land value in excess of surrounding market appreciation is both likely and imminent in the event early purchase is not undertaken. Acquisition can occur with a showing that substantial new improvements are planned for the property or existing improvements are to be altered or enlarged, resulting in a substantial increase in future acquisition cost.

If applying for an allocation of RM2 funds for right of way hardship or protection acquisition, the sponsor must investigate need for acquisition, including but not limited to independent appraisals of the property including appropriate investigations of the site for any environmental conditions affecting the value of the property. In the case of advance acquisition due to hardship, the project sponsor must submit to MTC documentation addressing the following minimum criteria prior to a hardship allocation being approved:

- The owner demonstrates a need to dispose of the property.
- The owner is unable to dispose of the property at fair market value because of the pending transportation facility plans.
- The owner cannot reasonably alleviate the hardship in the absence of the sponsor's purchase of the property.
- The sponsor's purchase will substantially alleviate the hardship.

In the case of advance acquisition for the purpose of protection, the aforementioned showing must be made that prompt acquisition is required to prevent development of property, which would cause substantially higher acquisition or construction costs if acquisition were deferred. Relocation costs of residences or businesses should be considered in the final financial analysis provided by the sponsor.

Advance acquisitions made prior to completion of environmental and location processes are not to influence environmental assessment of the project.

Note that there are federal and state laws, regulations and policies governing acquisition and relocation activities. It is not intended that the use of RM2 funds shall waive any of the laws, regulations, or policies that may apply.

If the Commission approves an allocation of RM2 funds for advance acquisition of right of way meeting the conditions as outlined above, the project sponsor shall provide that the land is held in escrow until project approval occurs for the transportation improvement.

### **Required Evidence of a Fully Funded Project Phase**

The Commission will allocate funds for capital projects only if it finds that the project phase is fully funded, either entirely with RM2 funds or with a combination of RM2 funds and other allocated funds. To receive an allocation of RM2 funds for a jointly funded phase, the other contributing funds must be assigned and allocated to that phase of work. Federal funds must have received an obligation (E-76) or Advance Construction Authorization, or be included in an approved FTA Grant. State Transportation Improvement Program (STIP) and Transportation Congestion Relief Program (TCRP) funds must have received an allocation from the California Transportation Commission (CTC). Local Measure funds must have an allocation action by the authority. All other funding must have an action allocating the funds for that phase of work by the responsible authorizing agency or governing body.

At the request of the project sponsor, the Commission may, on an exception basis, consider allocations of RM2 funding conditioned on the allocation of other funds for that phase. In granting conditional allocations, the Commission will consider the nature and timing of other funding commitments to the requested and future phases of work.

### **Future Funding Commitment**

When proposing allocations for only the preconstruction components of a capital project, the implementing agency must demonstrate the means by which it intends to fund the construction of a useable or operable segment or product, consistent with the Regional Transportation Plan. The anticipated total project cost and source of any uncommitted future funding must be identified in the IPR. The Commission will exercise caution when allocating to the right of way phase if there is no committed funding for constructing a useable segment of the project.

To be considered committed for future phases of work, federal funds must be in the current TIP or have a Full Funding Grant Agreement (FFGA) or approved Earmark. State Transportation Improvement Program (STIP) funds must be in the current STIP and Local Measure funds must have a commitment action by the governing authority. Transportation Congestion Relief Program (TCRP) funds are considered committed, however, based on current state budget actions, TCRP funds yet to be allocated by the California Transportation Commission (CTC) will not be considered available until FY 2005-06. All other funding must have an action committing the funds by the responsible authorizing agency.

### **Monitoring and Reporting Requirements**

Sponsors will provide MTC with Quarterly Progress Reports 30 days after the end of each quarter (on or before October 31<sup>st</sup>, January 31<sup>st</sup>, April 30<sup>th</sup>, July 31<sup>st</sup>). These reports are meant to update MTC on the project's scope, cost, and schedule. These reports shall include the following:

- **Status:** the phase currently underway and the progress since the last report; major meetings and decisions on the project; any significant accomplishments; any setbacks to the project. The sponsor should note whether they anticipate any problems, and what area these problems exist in.
- **Expenditures to date:** these will be specified as expenditures since the prior quarter, and will include all funding sources including RM2. These will be in sufficient detail to determine that they are eligible expenses.
- **Schedule changes:** any changes in the project schedule as outlined and approved in the IPR and the consequences of those changes, particularly related to project costs. If the schedule has been modified, a revised schedule must be attached.
- **Cost changes:** all changes should be noted in the Progress Report; changes greater than 20% or \$250,000 dollars, whichever is less, must be accompanied by a detailed explanation of what options the sponsor has considered to manage the change, including but not limited to what savings can be realized elsewhere in the project to compensate for the change, and what the risks are to not funding the change. If costs have changed by more than \$250,000 or 20%, whichever is greater, a revised funding plan and cash flow schedule must be attached.
- **Potential Claims:** If RM 2 funds are utilized for the construction phase of the project, then the sponsor must certify if there are any Notices of Potential Claim. If they exist, a summary of such notices as well as the likely cost or schedule impact shall be included. MTC acknowledges that information may be limited, given the need for confidentiality between the sponsor and the contractor. A confidential discussion with MTC staff may be requested; the sponsor shall make every effort to comply with this information request.
- The Progress Report shall be signed by the responsible Project Manager.

A format for submitting the quarterly Progress Report will be forwarded to Project Sponsors, essentially encompassing the items mentioned above.

### **At Risk Report/Cooperation with Consultants**

Upon receipt of the sponsor-submitted quarterly progress reports, MTC and/or its consultant shall prepare an At-Risk Report (Report) for submittal to the Commission that outlines critical scope, cost, or schedule changes to the project. MTC may retain a project control and monitoring consultant to monitor projects, and report to the Commission quarterly on projects or project phases at risk for meeting the adopted scope, cost, or schedule, assessing what options are available to the sponsor to respond to the at-risk condition, and what recommendations may be available to the Commission. The sponsor shall cooperate with MTC and its consultant in the preparation of the Report. This report shall include options the sponsor has or has not considered and the costs and risks associated with those options. The sponsor is expected to participate in discussions with the Commission regarding options to proceed. The Commission will take the Report into consideration when assessing the ability of the project or project phase to be delivered, per Section 30914(f) of the S&HC. Regarding scope changes, any changes resulting in

changes in costs or schedule should be delineated. The sponsor at a minimum should mention changes in scope due to permit agency requirements, local governing board direction, or changes in federal, state, or local laws and regulations. The sponsor shall cooperate with MTC or its consultants in the preparation of these documents.

### **Accommodations for Bicyclists, Pedestrians and Persons with Disabilities**

Federal, state and regional policies and directives emphasize the accommodation of bicyclists, pedestrians, and persons with disabilities when designing transportation facilities. As with many existing projects in the Bay Area, an RM2 project is likely to have a number of fund sources that make it whole. A project must incorporate the appropriate policy associated with the fund sources that make up the project.

Federal, State, and regional policies and directives regarding nonmotorized travel include the following:

#### **Federal Policy Mandates**

TEA-21 states that, "Bicycle transportation facilities and pedestrian walkways shall be considered, where appropriate, in conjunction with all new construction and reconstruction of transportation projects, except where bicycle and pedestrian use are not permitted." (Section 1202)

The Federal Highways Administration Program Guidance on bicycle and pedestrian issues makes a number of clear statements of intent, and provides a best practices concept as outlined in the US DOT Policy Statement on Integrating Bicycling and Walking into Transportation Infrastructure." (<http://www.fhwa.dot.gov/environment/bikeped/Design.htm>)

#### **State Policy Mandates**

California Government Code Section 65089(b)(1)(B)(5) requires that the design, construction and implementation of roadway projects proposed for funding in the RTIP must consider maintaining bicycle access and safety at a level comparable to that which existed prior to the improvement or alteration.

Caltrans Deputy Directive 64 (<http://www.dot.ca.gov/hq/tpp/offices/bike/DD64.pdf>), states: "the Department fully considers the needs of non-motorized travelers (including pedestrians, bicyclists, and persons with disabilities) in all programming, planning, maintenance, construction, operations, and project development activities and products. This includes incorporation of the best available standards in all of the Department's practices. The Department adopts the best practices concept in the US DOT Policy Statement on Integrating Bicycling and Walking into Transportation Infrastructure."

#### **Regional Policy Mandates**

Projects receiving RM2 funding must consider the impact to bicycle transportation, pedestrians and persons with disabilities. Guidance on considering bicycle transportation can be found in MTC's Regional Bicycle Plan (a component of the RTP) and Caltrans Deputy Directive 64. Of particular note is Caltrans Deputy Directive 64 which stipulates: "pedestrians, bicyclists and persons with disabilities must be considered in all programming,

planning, maintenance, construction, operations, and project development activities and products.” MTC’s Regional Bicycle Plan, adopted as a component of the RTP, requires that “all regionally funded projects consider enhancement of bicycle transportation consistent with Deputy Directive 64”.

MTC’s Regional Bicycle Plan, containing federal, state and regional policies for accommodating bicycles and non-motorized travel, is available on MTC’s Web site at: <http://www.mtc.ca.gov/projects/rtp/bicycle.htm>.

## **Section 3 – Operating Program Guidance**

### **Background**

Regional Measure 2 (RM 2) will provide operating support for a number of transit services. These projects are identified in Section 30914(d) of the California S&HC.

On October 13, 2004, the Federal Highway Administration with concurrence of the Federal Transit Administration approved the use of toll revenues from the four non-federalized Bay Area bridges for funding transit operations through the RM2 program. This decision allows MTC to begin allocating operating funds to the projects that were approved as part of RM2.

RM2 funds for operating assistance will be made available annually in accordance with the policies and procedures defined in this section.

### **Allocation Process**

Prior to the beginning of each fiscal year, pending resolution of the federal limitation concerning using toll revenues for operations, MTC will adopt a project specific budget for RM 2 operating funds. It is against this budget, subject to meeting eligibility requirements and fund availability, that project sponsors should request operating allocations.

In S&HC 30914.5(b), MTC is directed to execute an operating agreement with sponsors seeking RM2 funding covering operating assistance for transit services. These agreements are to be executed through a process of project sponsor governing board certification followed by Commission allocation action. The annual funding agreement will consist of approval by both project sponsors and MTC of the terms outlined in the sponsor Implementing Agency Resolution and Operating Assistance Proposal (OAP). The Implementing Agency Resolution should provide evidence of a full funding plan, adherence to performance measures, local agreement to conditions, local certification of absence of legal impediments and local indemnification of the Commission and adherence to the planned activity as outlined in the OAP.

An allocation request will be considered complete and ready for consideration by the Commission when all of the component elements to the request are submitted and approved for forwarding to the Commission by MTC staff.

Applications for operating assistance should be submitted sixty days prior to expected allocation date and should include the following material:

1. Cover letter detailing the allocation request;
2. Implementing Agency Resolution; \*
3. Operating Assistance Proposal;
4. Opinion of Legal Counsel; \*
5. Environmental documentation;
6. Certifications and assurances; and
7. Fiscal audit.

\* Project sponsors have the option of consolidating the 'Implementing Agency Resolution' and the 'Opinion of Legal Counsel.'

Appendix B details the formats for the Implementing Agency Resolution, Operating Assistance Proposal, the Opinion of Legal Counsel, and the Certifications and Assurances.

Staff will review the operating assistance request to ensure that the project request meets eligibility per S&H code 30914(d), compliance with financial audit requirements, satisfaction of established performance measures, and other requirements outlined in this policies and procedures manual.

### **Eligibility**

Transit services eligible to receive operating assistance under RM2 are those projects identified under Section 30914(d) of the S&HC. These projects and services have been determined to reduce congestion or to make improvements to travel in the toll bridge corridors. Due to other federal, state and regional requirements, full eligibility for the receipt of RM2 funding is not determined until approval of the funding allocation by the Commission.

Operating costs included in the operating expense object classes of the uniform system of accounts, exclusive of depreciation and amortization expenses and direct costs for providing charter service, are eligible for RM2 operating assistance. In the case of a transit service claimant that is allocated funds for payment to an entity, which is under contract with it to provide transportation services, “operating cost” also includes the amount of the fare revenues that are received by the entity providing the services and not transferred to the claimant. Eligible expenses for operating follow the eligibility criteria for Transportation Development Act funds.

Service initiation costs for RM2 routes – including preparation of environmental clearance – are an eligible expense.

No operator or transit service claimant shall be eligible to receive moneys during the fiscal year from RM2 operating assistance for operating costs that exceed its actual operating cost for the service identified in S&HC 30914(d) or subsequently amended through an action by the MTC Commission (including payment for disposition of claims arising out of the operator’s liability) in the fiscal year less the sum of the following amounts:

1. The actual amount of fare revenues received during the fiscal year.
- 2.
3. The amount of other operating subsidies directed at the service during the fiscal year.

For those cases where the RM2 service is a portion of an operator’s service, the methodology used to derive the costs and revenues for the route must be specified at the time of allocation. Any change in the methodology will require a revision to the allocation.

The period of eligibility for operating expenses is for the fiscal year for which the allocation is made. The term fiscal year has reference to the year commencing July 1 and ending June 30 of the following year.

Notwithstanding the provisions listed above for transit operating, for purposes of TransLink® and Water Transit Authority administrative expenses, the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) have determined that planning activities are

eligible for reimbursement from toll revenues. Allocation for planning activities will be in accordance with federal guidance and may need to be reviewed by federal agencies in advance of the allocation to confirm that the planned activities are Title 23 eligible.

### **Consistency with Plans**

In addition to the eligibility requirements outlined above, applicants must demonstrate consistency with regional plans and federal planning requirements including but not limited to:

- **MTC Regional Transportation Plan:** For operations projects, applicants should provide the necessary project reference or information to verify that their project is compatible with the RTP.
- **Applicant's Short Range Transit Plan (SRTP) or Countywide Plan:** For operations projects, applicants must reference how the project is reflected in their Short Range Transit Plan or County-wide Five Year Plan. All transit operators that receive operating assistance shall prepare a Short Range Transit Plan, or planning document equivalent for their system, including reference to the planned use of RM2 bridge tolls as part of their overall operations. Failure to complete an SRTP could delay an allocation or make a project sponsor ineligible for RM2 operating assistance.
- **Air Quality Conformity:** An applicant's project must be consistent with the TIP for which MTC has completed an air quality conformity assessment.

### **Environmental Documentation**

Pursuant to California Environmental Quality Act (CEQA) Public Resources Code §21000, et seq., all applicants are required to submit an environmental document that has been stamped by the County Clerk for each project in their annual application. Please refer to Public Resources Code and Title 14 of the California Code of Regulations for more information. At the time of service initiation, an applicant may submit a request for RM2 funding to cover the costs of the environmental assessment for the RM2 route. Applicants are urged to refer to the statutory and regulatory sections cited when preparing the environmental assessment documents. Applicants should consult their environmental officer for guidance in completion of this requirement.

An application for operating funds solely to maintain existing transit services normally will be a Class I categorical exemption under CEQA, and requires only a Notice of Exemption. Applicants should check with their environmental officer for further assistance.

### **Disbursement of Funds**

After approval by the Commission, allocations of operating funds through RM2 will be disbursed in accordance with the terms and conditions as established in the allocation instructions by MTC. Generally, allocation instructions will direct payments to be made monthly in advance, subject to quarterly adjustments to reflect actual expenses based on monthly invoices. All disbursements are subject to the availability of bridge toll revenues and determination of eligible expenses based on submitted invoices. Specific invoicing procedures will be provided to the sponsor.

Disbursement of RM2 operating assistance is conditional on timely and satisfactory completion of a fiscal audit and may be delayed, cancelled, or adjusted based on audit findings of ineligible expenses. Delinquency of report submittals or failure to comply with other RM2 operating assistance conditions could be grounds for withholding disbursement of funding or rescinding allocations.

### **Annual Update of Operating Assistance Plan**

Streets and Highway Code 30914.5(b) requires that MTC enter into an agreement with all recipients of RM2 operating assistance that shall include, at a minimum, a fully funded operating plan that conforms to and is consistent with the adopted performance measures. The agreement shall also include a schedule of projected fare revenue and any other operating revenues needed to demonstrate that the service is viable in the near-term and is expected to meet the adopted performance measures. These agreements are to be executed through a process of project sponsor governing board certification followed by Commission allocation action as discussed above in Allocation Process.

Applicants for RM2 operating assistance will use the Operating Assistance Plan (OAP) to demonstrate a fully funded operating plan that is consistent with MTC adopted performance measures. The original submittal of the OAP for FY 2004-05 was due by May 1<sup>st</sup> for sponsors requesting allocation in the fiscal year and by June 1<sup>st</sup> for all other sponsors. In subsequent years, the submittal shall follow a similar schedule but be updated to reflect audited actual data as well as adjusted current year financial and operating data statistics, as appropriate.

The OAP required information is included in Appendix B.

### **Performance Measures**

Prior to allocation of revenue for transit operating assistance under subdivision (d) of Section 30914 of the S&HC, the MTC shall adopt performance measures related to farebox recovery, ridership, and other performance measures as needed. The performance measures are included in Appendix B, Part 5.

The performance measures, as developed in concert with the affected transit operators and the Advisory Council and as approved by the Commission, will effect allocations starting in FY 2006-07. The applicable year for calculating performance measures will be two years in arrears of a requested allocation year. In other words, for FY 2006-07 operating allocations, the Commission will base compliance with the performance measures on FY 2004-05 operating performance.

An independent auditor in the fiscal audit, as discussed below shall verify the certification of compliance with adopted performance measures.

### **Fiscal Audit**

As established in S&H Code 30914.5(c), prior to annual allocation of transit operating assistance by the MTC, the MTC shall conduct an independent audit that contains audited financial information, including an opinion on the status and costs of the project and its compliance with the approved performance measures. At a minimum, the fiscal audit will provide the auditor's professional opinion as to whether RM2 operating assistance was spent on eligible costs and performance measures were met.

In addition, a project sponsor should include RM2 expenses and revenues in its general fiscal audit. This annual certified fiscal audit shall be submitted to MTC within 180 days after the close of the fiscal year in which the RM2 allocation was received. MTC may suspend disbursement of RM2 operating assistance if an operator fails to meet this deadline.

The Commission's determination of eligibility for operating assistance will depend on the fiscal audit that is two years in arrears. The first year that fiscal audits must address is FY 2004-05, for use in allocation decisions for FY 2006-07.

All fiscal and accounting records and other supporting papers shall be retained for a minimum of four years following the close of the fiscal year of expenditure.

### **Monitoring Requirements/Cooperation with MTC and MTC's Consultants**

Recipients of RM2 operating assistance funds agree to work cooperatively with MTC staff and/or MTC consultants to provide operating statistics that will be used to monitor the effectiveness of the RM2 operating program and consistency with MTC adopted performance measures. This includes but is not limited to assisting in the collection of survey data, on-board vehicle counts, and making available relevant ridership and costs information. It is important to note that, in most cases, these performance measures will be route-specific and therefore require isolation of the operating cost, passenger boardings, and fare revenue for the route or line for which RM 2 operating assistance is secured.

### **Regional Coordination/Participation in MTC Programs**

Recipients of RM2 operating assistance agree to participate in regional programs aimed at enhancing transit information and customer service. At a minimum, recipients agree to 1) provide their schedule and real-time transit information/data to 511, maintain the data so that it is updated in a timely and accurate manner, and market 511 as the way to learn about the transit service; and 2) offer TransLink® services and market TransLink® as the fare medium to pay for the transit service, as applicable based on transit operator implementation of TransLink®. Recipients also agree to participate in the Integrated Fare Structure and Transit Connectivity studies, as authorized under S&H codes 30914(c). Further, transit operators receiving RM2 operating assistance agree to make reasonable efforts to implement any recommendations resulting from these studies, as appropriate.

## **Appendix A – Capital Intent for Allocation Request Forms**

### **Part 1: RM2 Allocation Request Initiation Form**

A project sponsor is requested to submit a one page Allocation Request form at least 60 days prior to a request MTC Commission allocation action. A draft Initial Project Report (IPR) should accompany the allocation request. The form is available electronically at [www.mtc.ca.gov](http://www.mtc.ca.gov).

## **Part 2: RM2 Initial Project Report (IPR) Format**

Section 30914(e) of the California Streets and Highways Code requires that project sponsors with projects listed in the capital program of the Regional Traffic Relief Plan (Section 30914(c)) submit an Initial Project Report (IPR) to the Metropolitan Transportation Commission (MTC) by July 1, 2004. Furthermore, MTC requires the project sponsor to submit an updated report to MTC at least annually, and an updated report be submitted along with the funding allocation request. The governing board of the agency submitting the allocation request must approve the updated IPR before MTC can approve the IPR, or allocation of funds. MTC will approve the report, or updated report, in conjunction with the funding allocation.

The report shall include all information required to describe the project in detail, including identification of lead sponsor, the status of any environmental documents relevant to the project, additional funds beyond RM2 required to fully fund the project, the amount, if any, of funds expended to date, a summary of any impediments to the completion of the project, a detailed financial plan, and notification of whether Regional Measure 2 (RM2) funds will be needed within the subsequent 12 months (following fiscal year). The Initial Project Report format is available at [www.mtc.ca.gov](http://www.mtc.ca.gov).

## **Appendix B – Capital Allocation Application Forms**

### **Part 1: RM2 Implementing Agency Resolution of Project Compliance**

#### **Resolution No.**

**Implementing Agency:**

**Project Title:**

Whereas, SB 916 (Chapter 715, Statutes 2004), commonly referred as Regional Measure 2, identified projects eligible to receive funding under the Regional Traffic Relief Plan; and

Whereas, the Metropolitan Transportation Commission (MTC) is responsible for funding projects eligible for Regional Measure 2 funds, pursuant to Streets and Highways Code Section 30914(c) and (d); and

Whereas, MTC has established a process whereby eligible transportation project sponsors may submit allocation requests for Regional Measure 2 funding; and

Whereas, allocations to MTC must be submitted consistent with procedures and conditions as outlined in Regional Measure 2 Policy and Procedures; and

Whereas, (agency name) is an eligible sponsor of transportation project(s) in Regional Measure 2, Regional Traffic Relief Plan funds; and

Whereas, the (project title) is eligible for consideration in the Regional Traffic Relief Plan of Regional Measure 2, as identified in California Streets and Highways Code Section 30914(c) or (d); and

Whereas, the Regional Measure 2 allocation request, attached hereto in the Initial Project Report and incorporated herein as though set forth at length, lists the project, purpose, schedule, budget, expenditure and cash flow plan for which (agency name) is requesting that MTC allocate Regional Measure 2 funds; and

Resolved, that (agency name), and its agents shall comply with the provisions of the Metropolitan Transportation Commission's Regional Measure 2 Policy Guidance (MTC Resolution No. 3636); and be it further

Resolved, that (agency) certifies that the project is consistent with the Regional Transportation Plan (RTP).

Resolved, that the year of funding for any design, right-of-way and/or construction phases has taken into consideration the time necessary to obtain environmental clearance and permitting approval for the project.

Resolved, that the Regional Measure 2 phase or segment is fully funded, and results in an operable and useable segment.

Resolved, that (agency name) approves the updated Initial Project Report, attached to this resolution; and be it further

Resolved, that (agency name) approves the cash flow plan, attached to this resolution; and be it further

Resolved, that (agency name) has reviewed the project needs and has adequate staffing resources to deliver and complete the project within the schedule set forth in the updated Initial Project Report, attached to this resolution; and be it further

Resolved, that (agency name) is an eligible sponsor of projects in the Regional Measure 2 Regional Traffic Relief Plan, Capital Program, in accordance with California Streets and Highways Code 30914(c); and be it further

Resolved, that (agency name) is authorized to submit an application for Regional Measure 2 funds for (project name) in accordance with California Streets and Highways Code 30914(c); and be it further

Resolved, that (agency name) certifies that the projects and purposes for which RM2 funds are being requested is in compliance with the requirements of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), and with the State Environmental Impact Report Guidelines (14 California Code of Regulations Section 15000 et seq.) and if relevant the National Environmental Policy Act (NEPA), 42 USC Section 4-1 et. seq. and the applicable regulations thereunder; and be it further

Resolved, that there is no legal impediment to (agency name) making allocation requests for Regional Measure 2 funds; and be it further

Resolved, that there is no pending or threatened litigation which might in any way adversely affect the proposed project, or the ability of (agency name) to deliver such project; and be it further

Resolved that (agency name) indemnifies and holds harmless MTC, its Commissioners, representatives, agents, and employees from and against all claims, injury, suits, demands, liability, losses, damages, and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any act or failure to act of (agency name), its officers, employees or agents, or subcontractors or any of them in connection with its performance of services under this allocation of RM2 funds. In addition to any other remedy authorized by law, so much of the funding due under this allocation of RM2 funds as shall reasonably be considered necessary by MTC may be retained until disposition has been made of any claim for damages, and be it further

Resolved, that (agency name) shall, if any revenues or profits from any non-governmental use of property (or project) that those revenues or profits shall be used exclusively for the public transportation services for which the project was initially approved, either for capital improvements or maintenance and operational costs, otherwise the Metropolitan Transportation Commission is entitled to a proportionate share equal to MTC's percentage participation in the projects(s); and be it further

Resolved, that assets purchased with RM2 funds including facilities and equipment shall be used for the public transportation uses intended, and should said facilities and equipment cease to be operated or maintained for their intended public transportation purposes for its useful life, that the Metropolitan Transportation Commission (MTC) shall be entitled to a present day value refund or credit (at MTC's option) based on MTC's share of the Fair Market Value of the said facilities and equipment at the time the public transportation uses ceased, which shall be paid back to MTC in the same proportion that Regional Measure 2 funds were originally used; and be it further

Resolved, that (agency name) shall post on both ends of the construction site(s) at least two signs visible to the public stating that the Project is funded with Regional Measure 2 Toll Revenues; and be it further

Resolved, that (agency name) authorizes its (Executive Director, General Manager, or his/her designee) to execute and submit an allocation request for the (environmental/ design/ right-of-way/ construction) phase with MTC for Regional Measure 2 funds in the amount of (\$\_\_\_\_\_), for the project, purposes and amounts included in the project application attached to this resolution; and be it further

Resolved, that the (Executive Director, General Manager, or his/her designee) is hereby delegated the authority to make non-substantive changes or minor amendments to the IPR as he/she deems appropriate.

Resolved, that a copy of this resolution shall be transmitted to MTC in conjunction with the filing of the (agency name) application referenced herein.

## Part 2: RM2 Sample Opinion of Legal Counsel

Project sponsors have the option of including specified terms and conditions within the Resolution of Local Support as included in Part 1. If a project sponsor elects not to include the specified language within the Resolution of Local Support, then the sponsor shall provide MTC with a current Opinion of Counsel stating that the agency is an eligible sponsor of projects for the Regional Measure 2; that the agency is authorized to perform the project for which funds are requested; that there is no legal impediment to the agency applying for the funds; and that there is no pending or anticipated litigation which might adversely affect the project or the ability of the agency to carry out the project. A sample format is provided below.

(Date)

To: Metropolitan Transportation Commission  
Fr: (Applicant)  
Re: Eligibility for Regional Measure 2 funds

This communication will serve as the requisite opinion of counsel in connection with the allocation of (Applicant) \_\_\_\_\_ for funding from Regional Measure 2 Regional Traffic Relief Plan made available pursuant to Streets and Highways Code Section 30914(c)(d) for (Project Name) \_\_\_\_\_

1. (Applicant) \_\_\_\_\_ is an eligible sponsor for the Regional Measure 2 funding.
2. (Applicant) \_\_\_\_\_ is authorized to submit an allocation request for Regional Measure 2 funding for (project) \_\_\_\_\_
3. I have reviewed the pertinent state laws and I am of the opinion that there is no legal impediment to (Applicant) \_\_\_\_\_ making applications for Regional Measure 2 funds. Furthermore, as a result of my examinations, I find that there is no pending or threatened litigation that might in any way adversely affect the proposed projects, or the ability of (Applicant) \_\_\_\_\_ to carry out such projects.

Sincerely,

\_\_\_\_\_  
Legal Counsel

\_\_\_\_\_  
Print Name

### **Part 3: RM2 Initial Project Report (IPR) Format**

Section 30914(e) of the California Streets and Highways Code requires that project sponsors with projects listed in the capital program of the Regional Traffic Relief Plan (Section 30914(c)) submit an Initial Project Report (IPR) to the Metropolitan Transportation Commission (MTC) by July 1, 2004. Furthermore, MTC requires the project sponsor to submit an updated report to MTC at least annually, and an updated report be submitted along with the funding allocation request. The governing board of the agency submitting the allocation request must approve the updated IPR before MTC can approve the IPR, or allocation of funds. MTC will approve the report, or updated report, in conjunction with the funding allocation.

The report shall include all information required to describe the project in detail, including identification of lead sponsor, the status of any environmental documents relevant to the project, additional funds beyond RM2 required to fully fund the project, the amount, if any, of funds expended to date, a summary of any impediments to the completion of the project, a detailed financial plan, and notification of whether Regional Measure 2 (RM2) funds will be needed within the subsequent 12 months (following fiscal year). The Initial Project Report is outlined below, with the report format available at [www.mtc.ca.gov](http://www.mtc.ca.gov).

- **Project Description and Sponsor Information**, including identification of lead sponsor in coordination with all identified sponsors, and identification of agency to seek and receive allocations from MTC,
- **Project Delivery Information**, including summary of any impediments to the completion of the project, status of any environmental documents relevant to the project, status of the project phases and delivery milestones, and discussion of the operability of the project once completed.
- **Project Budget Information**, including the total budget for the project, and any prior expenditure.
- **RM2 Funding Need Information**, including RM2 expenditure (cash flow) plan, status of any prior RM2 expenditures, and identification of any RM2 funding needs for the next fiscal year, and beyond.
- **Project Funding Information**, including identification of committed funding to the project, any uncommitted funding required to fully fund the project, and segregation of the RM2 deliverable segment if different from the total project. Any timely use of funds requirements must be noted and incorporated into the overall funding schedule of the financial plan. The RM2 phase or component must be fully funded with committed funds, and it must be demonstrated that the RM2 funded phase or component results in a useable or operable segment. For transit projects resulting in expanded or enhanced services, the sponsor shall document the financial capacity to operate and maintain those services for a period of at least 10 years following the year services are initiated.
- **Governing Board Action**, including verification of approval of the IPR. The IPR must be approved by the board or governing body of the agency responsible for preparing and submitting the IPR and requested the allocation of RM2 funding prior to MTC approval of the IPR and allocation of funds. Verification of the governing board action should be attached to the IPR.

- **Agency Contact and IPR Preparation Information**, including agency and project manager, and IPR preparer contact information, and date the report was prepared or updated.

#### **Part 4: Environmental Documentation**

Pursuant to California Environmental Quality Act Public Resources Code §21000, et seq., all applicants are required to submit a valid environmental document that has been certified by the County Clerk for each project. Please refer to Public Resources Code and Title 14 of the California Code of Regulations for more information. Applicants are urged to refer to the statutory and regulatory sections cited when preparing any environmental assessment under CEQA or NEPA. Applicants should consult their environmental officer for guidance in completion of this requirement. If a project is federally funded or is anticipated to be federally funded, project sponsors must submit approved National Environmental Protection Act documents.

#### **Part 5: RM2 Evidence of Allocation and Commitment of Complementary Funds**

**Applicants are required to submit evidence of the commitment of complementary funds for the phase for which the applicant is seeking an allocation of RM2 funds. Copies of the applicable resolution(s) and/or governing body actions allocating the funds to the phase, within the years displayed in the cashflow plan, must be attached to the allocation request. The applicant must demonstrate that the phase is entirely funded prior to the allocation of RM2 funds.**

#### **Part 6: RM2 Allocation Work Plan**

The implementing agency must submit a detailed Work Plan covering the deliverables for which a RM2 funding allocation is being sought. The Work Plan should be consistent with the parameters included in the Board approved Initial Project Report, and must have sufficient detail regarding each deliverables' scope, cost and schedule. The elements of the work plan will serve as the basis of MTC staff review of project sponsor invoices. MTC staff will work with sponsors to ascertain the work breakdown level appropriate to the funding request being made. The Work Plan must be submitted with the allocation application request.

#### **Part 7: RM2 Estimated Budget Plan**

The sponsor must submit an Estimated Budget Plan (EBP) outlining the agency costs, consultant costs, and any other costs associated with the delivery of the Work Plan element. A separate EBP is required for each deliverable segment within each allocation. In some instances an allocation may have only one deliverable. In other instances an allocation may be associated with multiple deliverables. The format for the EBP submission is available at [www.mtc.ca.gov](http://www.mtc.ca.gov).

## **Appendix B – Operating Allocation Request Forms**

### **Part 1: Certifications and Assurances**

(Sample form is available at [www.mtc.ca.gov](http://www.mtc.ca.gov))

Applicant certifies that, if RM-2 funding was received in the prior year, it has included the RM-2 costs and revenues in its general fiscal audit for that year. Applicant also assures that it will include the RM-2 costs and revenues in its general fiscal audit for the year in which funds are requested .

Applicant certifies to one of the following:

- 1) For bus operators, that it has submitted a copy of the California Highway Patrol (CHP) certification, which was issued within the last 13 months indicating compliance with California Vehicle Code §1808.1 and Public Utility Code §99251 (CHP "pull notice system and periodic reports").
- 2) For rail or ferry operators, it certifies that it is current on all inspections and certifications required by federal and state agencies.

Applicant for RM2 funds certifies that it has current SB 602 "joint fare revenue sharing agreements" in place with transit operators in the MTC region with which its service connects, and that it has submitted valid and current copies of all such agreements to MTC.

Applicant also agrees to participate in the Integrated Fare Structure and Transit Connectivity studies authorized in SB 916 (Chapter 715, Statutes of 2004).

Applicant for funds certifies that it complies with MTC's Transit Coordination Implementation Plan (MTC Resolution No. 3055, revised) and with Public Utilities Code §99314.5(c) and §99314.7).

The applicant may be asked to certify such other assurances as MTC may deem appropriate consistent with the RM2 Policies and Procedures outlined above.

## **Part 2: RM2 Operating Assistance Proposal (OAP)**

The Operating Assistance Proposal (OAP) includes the information outlined below. The format for sponsors to complete is available to be downloaded at [www.mtc.ca.gov](http://www.mtc.ca.gov).

### **1. Description of Proposed Service**

- a. Map of service area.
- b. Description of markets being served (both travel demand as well as inter-operator connections)
- c. Description of methodology used to estimate ridership/assign ridership

### **2. Service Parameters**

- a. Service start/end times.
- b. Headways in the peak and off-peak
- c. Vehicles in service during the peak and off-peak
- d. Daily revenue vehicle hours

### **3. Budget Information**

- a. Basis of expense projections, i.e., description of cost model.
- b. Basis of fare revenue projections (assumptions on fare structure, including any increases over the five years, and resulting average fare).
- c. Description of other revenues – if subsidies from other agencies are included, describe status of commitments.
- d. Five-year projections and audited past actual and adjusted current year information for operating cost and revenue. Revenue projections should disaggregate fare revenue, TDA, local sales tax, private sector contributions, and other subsidies.

### **4. Operating Data and Performance Measures**

- a. Five-year projections and audited past actual and adjusted current year information for service parameters including annual ridership, weekday ridership, revenue vehicle hours, and revenue miles.
- b. Five-year projections and audited past actual and adjusted current year information for performance measures including farebox recovery ratio, passengers per revenue hour, cost per rider, subsidy per rider, and cost per revenue hour.

### **5. Implementation Schedule and Status Report**

- a. Proposed start date
- b. Environmental clearance – status and schedule
- c. Vehicles/other capital – status and procurement schedule for incremental capital needed to support RM2 funded operations.
- d. If partnering with other agencies, provide letters of support from partners.
- e. Description of potential implementation issues
- f. Once operational, please provide a status report on the implementation to-date as well as any planned schedule adjustments or other service changes in the coming year.

### **Part 3: Sample RM2 Operating Board Resolution**

#### **Resolution No.**

**Implementing Agency:**

**Project Title:**

Whereas, SB 916 (Chapter 715, Statutes 2004), commonly referred as Regional Measure 2, identified projects eligible to receive funding under the Regional Traffic Relief Plan; and

Whereas, the Metropolitan Transportation Commission (MTC) is responsible for funding projects eligible for Regional Measure 2 funds, pursuant to Streets and Highways Code Section 30914(c) and (d); and

Whereas, MTC has established a process whereby eligible transportation project sponsors may submit allocation requests for Regional Measure 2 funding; and

Whereas, allocations to MTC must be submitted consistent with procedures and conditions as outlined in Regional Measure 2 Policy and Procedures; and

Whereas, (agency name) is an eligible sponsor of transportation project(s) in Regional Measure 2, Regional Traffic Relief Plan funds; and

Whereas, the (project title) is eligible for consideration in the Regional Traffic Relief Plan of Regional Measure 2, as identified in California Streets and Highways Code Section 30914(c) or (d); and

Whereas, the Regional Measure 2 allocation request, attached hereto in the Operating Assistance Proposal and incorporated herein as though set forth at length, demonstrates a fully funded operating plan that is consistent with the adopted performance measures, as applicable, for which (agency name) is requesting that MTC allocate Regional Measure 2 funds; and

Whereas, Part 2 of the project application, attached hereto and incorporated herein as though set forth at length, includes the certification by (agency name) of assurances required for the allocation of funds by MTC; now, therefore, be it

Resolved, that (agency name), and its agents shall comply with the provisions of the Metropolitan Transportation Commission's Regional Measure 2 Policy Guidance (MTC Resolution No. 3636); and be it further

Resolved, that (agency) certifies that the project is consistent with the Regional Transportation Plan (RTP).

Resolved, that (agency name) approves the updated Operating Assistance Proposal, attached to this resolution; and be it further

Resolved, that (agency name) approves the certification of assurances, attached to this resolution; and be it further

Resolved, that (agency name) is an eligible sponsor of projects in the Regional Measure 2 Regional Traffic Relief Plan, Capital Program, in accordance with California Streets and Highways Code 30914(d); and be it further

Resolved, that (agency name) is authorized to submit an application for Regional Measure 2 funds for (project name) in accordance with California Streets and Highways Code 30914(d); and be it further

Resolved, that (agency name) certifies that the projects and purposes for which RM2 funds are being requested are in compliance with the requirements of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), and with the State Environmental Impact Report Guidelines (14 California Code of Regulations Section 15000 et seq.) and, if relevant the National Environmental Policy Act (NEPA), 42 USC Section 4-1 et. seq. and the applicable regulations thereunder; and be it further

Resolved, that there is no legal impediment to (agency name) making allocation requests for Regional Measure 2 funds; and be it further

Resolved, that there is no pending or threatened litigation which might in any way adversely affect the proposed project, or the ability of (agency name) to deliver such project; and be it further

Resolved that (agency name) indemnifies and holds harmless MTC, its Commissioners, representatives, agents, and employees from and against all claims, injury, suits, demands, liability, losses, damages, and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any act or failure to act of (agency name), its officers, employees or agents, or subcontractors or any of them in connection with its performance of services under this allocation of RM2 funds. In addition to any other remedy authorized by law, so much of the funding due under this allocation of RM2 funds as shall reasonably be considered necessary by MTC may be retained until disposition has been made of any claim for damages.

Resolved, that (agency name) shall, if any revenues or profits from any non-governmental use of property (or project) that those revenues or profits shall be used exclusively for the public transportation services for which the project was initially approved, either for capital improvements or maintenance and operational costs, otherwise the Metropolitan Transportation Commission is entitled to a proportionate share equal to MTC's percentage participation in the project(s); and be it further

Resolved, that (agency name) authorizes its (Executive Director, General Manager, or his/her designee) to execute and submit an allocation request for operating or planning costs for (Fiscal Year) with MTC for Regional Measure 2 funds in the amount of (\$\_\_\_\_\_), for the project, purposes and amounts included in the project application attached to this resolution; and be it further

Resolved, that the (Executive Director, General Manager, or his/her designee) is hereby delegated the authority to make non-substantive changes or minor amendments to the IPR as he/she deems appropriate.

Resolved, that a copy of this resolution shall be transmitted to MTC in conjunction with the filing of the (agency name) application referenced herein.

#### **Part 4: RM2 Sample Opinion of Legal Counsel**

Project sponsors have the option of including specified terms and conditions within the Resolution of Local Support as included in Part 3. If a project sponsor elects not to include the specified language within the Resolution of Local Support, then the sponsor shall provide MTC with a current Opinion of Counsel stating that the agency is an eligible sponsor of projects for the Regional Measure 2; that the agency is authorized to perform the project for which funds are requested; that there is no legal impediment to the agency applying for the funds; and that there is no pending or anticipated litigation which might adversely affect the project or the ability of the agency to carry out the project. A sample format is provided below.

(Date)

To: Metropolitan Transportation Commission  
Fr: (Applicant)  
Re: Eligibility for Regional Measure 2 funds

This communication will serve as the requisite opinion of counsel in connection with the allocation of (Applicant) \_\_\_\_\_ for funding from Regional Measure 2 Regional Traffic Relief Plan made available pursuant to Streets and Highways Code Section 30914(c)(d) for (Project Name) \_\_\_\_\_

4. (Applicant) \_\_\_\_\_ is an eligible sponsor for the Regional Measure 2 funding.
5. (Applicant) \_\_\_\_\_ is authorized to submit an allocation request for Regional Measure 2 funding for (project) \_\_\_\_\_
6. I have reviewed the pertinent state laws and I am of the opinion that there is no legal impediment to (Applicant) \_\_\_\_\_ making applications for Regional Measure 2 funds. Furthermore, as a result of my examinations, I find that there is no pending or threatened litigation that might in any way adversely affect the proposed projects, or the ability of (Applicant) \_\_\_\_\_ to carry out such projects.

Sincerely,

\_\_\_\_\_  
Legal Counsel

\_\_\_\_\_  
Print Name

### **Part 5: RM2 Performance Measures for Operating Projects**

1. The objective in establishing performance measures is to ensure that the Regional Measure 2 (RM2) operating dollars are directed to productive services within the corridors identified in the legislation, or as redirected by the Commission after a public hearing process.
2. Two performance measures will be used to assess cost recovery and ridership change in accordance with California Streets and Highway Code (S&HC) 30914.5(a), which requires that MTC shall adopt performance measures related to farebox recovery ratio and ridership: 1) farebox recovery and 2) change in passengers per revenue vehicle hour. Farebox recovery ratio and change in passengers per hour performance measures are established in items 4 and 5.
3. Recognizing that the market demands as well as policy goals for the operating projects in S&HC 30914(d) are not uniform, several thresholds for farebox recovery are established and outlined in item 4.
4. An operating segment must meet or exceed the farebox recovery ratio conforming to its particular mode and service type as defined in the table below. Peak service is defined as service that does not continue at least hourly between the morning and afternoon commute periods. All day service is generally defined as service that is provided at least hourly between the hours of 6 a.m. and 7 p.m. Long-haul bus services (> 25 miles) will be deemed “all day” if service is provided at least every two hours during the midday. Owl service is service that has been developed with the specific goal of closing a temporal gap in the transit network.

| <b>Service Type</b>    | <b>Ferry</b> | <b>Rail</b> | <b>Bus</b> |
|------------------------|--------------|-------------|------------|
| <b>Peak Service</b>    | 40%          | 35%         | 30%        |
| <b>All Day Service</b> | 30%          | 25%         | 20%        |
| <b>Owl Service</b>     | N/A          | N/A         | 10%        |

Projects (11) and (12) in S&HC 30914(d) are exempt from the farebox thresholds above and instead must meet the farebox requirements established for receiving allocation for state funds (Transportation Development Act, State Transit Assistance, and AB 1107).

5. It is the expectation that all operating segments will maintain a positive annual change in passengers per revenue vehicle hour. A negative change in an amount equal to or less than a negative change in Transportation Development Act revenues in the county of operation (or average between the origination and destination) for the same period will be allowable. The goal is to have positive ridership change from year-to-year, but the allowance for a negative change is to account for economic adjustments in the region.

Projects (11) and (12) in S&HC 30914(d) are exempt from the passenger per revenue vehicle hour changes and instead must meet the performance measure requirements established for receiving allocation for state funds (Transportation Development Act, State Transit Assistance, and AB 1107).

6. If an operating program cannot achieve its performance objectives described above, MTC staff will consult with the project sponsor about potential service adjustments or redeployment to

increase the productivity of the route and best serve transit in the corridor. After this consultation, the sponsor will be given the opportunity to present to the Commission a corrective action plan for meeting the RM2 performance measures. Based on the corrective action plan recommendation, the Commission shall give the sponsor a time certain to achieve the performance measure or have its funding reassigned. If the project continues to not meet the performance measure, the Commission shall hold a public hearing concerning the project. After the hearing, the Commission may vote to modify the program's scope, decrease its level of funding, or to reassign all of the funds to another or an additional project.

7. Only transit operations will be subject to the performance measure outlined in this policy. Projects (13) and (14) outlined in RM2 under S&HC 30914(d) are not subject to these performance measures as these projects do not meet the definition of transit operations.
8. Each operating project that requests RM2 operating funding will be given a two-year ramp-up period to meet the performance measures with an expectation that measures will be met in the third year of service. If an operating scope or definition is changed at the sponsor request after initial rollout of the operating project, no new ramp-up period will be granted.
9. Compliance with the performance measures must be certified as part of the annual fiscal audit prepared by the project sponsor. The compliance and, therefore eligibility for RM2 operating funds, for a given fiscal year will be based on fiscal audit two years in arrears. Therefore, the first year for which performance measures will be assessed is for FY 2008-09 operating requests; these requests will take into consideration performance in FY 2006-07.
10. For purposes of calculating farebox recovery ratio and passengers per revenue vehicle hour, project sponsors must allocate costs in accordance with the cost allocation shown below for the various service types. This cost allocation strategy must be consistent with that provided to MTC as part of the annual Operating Assistance Plan (OAP). Further, baseline data on ridership, costs, fares, and average fare must be established as part of the OAP for RM2 services that represent an incremental change to the operator's overall service plan. The operator should establish a data collection plan for assessing changes to the baseline system for purposes of calculating ridership, costs, and fare for the new RM2 incremental services.

| Service Type           | Cost Allocation Methodology |
|------------------------|-----------------------------|
| <b>Peak Service</b>    | Fully Allocated Costs       |
| <b>All Day Service</b> | Fully Allocated Costs       |
| <b>Owl Service</b>     | Marginal Costs              |

11. For purposes of this policy, the farebox recovery ratio is the ratio of fares collected on the RM2-funded segment to total operating costs for that same segment. Passenger per revenue vehicle hour is defined as the total passengers (total of all adult, youth and student, senior and disabled, inter-operator paid transfer, and non-revenue boardings) divided by the revenue vehicle hours (the total number of hours that each transit vehicle is in revenue service, including layover time).